



Bureau of the Public Debt's  
Administrative Resource Center

## Human Resources Directive Franchise Services

**Number:** HRD FS 752-1  
**Original Issue Date:** October 2000  
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**Subject:** Disciplinary and Adverse Actions

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1. **PURPOSE** Establishes procedures and requirements for supervisors and managers to use in initiating and effecting corrective actions.
2. **SCOPE** Applies to all permanent status non-bargaining unit employees who have completed their probationary period or have one year of current, continuous employment.
3. **POLICY** Discipline is to be applied fairly and consistently, and only for such cause as will promote the efficiency of the service.
4. **AUTHORITIES** 5 USC Chapter 75 and 5 CFR Chapter 75.
5. **DEFINITIONS**
  - a. Adverse Action. Generally, an action often used to deal with serious offenses or when lesser discipline has been ineffective. In a few unique instances, these actions are not "corrective" and can occur through no fault of the employee:
    - (1) Furlough of less than 30 days.
    - (2) Suspension of more than 14 days.
    - (3) Reduction in grade.
    - (4) Reduction in pay.
    - (5) Termination of employment (removal).
  - b. Days. Consecutive calendar days, which includes holidays, weekends, and other non-duty day.
  - c. Disciplinary Action. An action intended to correct less serious incidents of misconduct or performance deficiency and results in one of the following:

(1) Oral Admonishment Confirmed in Writing.

(2) Letter of Reprimand.

(3) Suspension of 14 Days or Less.

d. Discipline. A general category of corrective actions that includes the actions defined under both “adverse action” and “disciplinary action.”

e. Indefinite Suspension. A corrective action that may be used pending further investigation or judicial disposition of a criminal matter. Used when there is insufficient evidence available to warrant removal or where disclosure of the evidence would jeopardize prosecution of a criminal case.

f. Pre-Action Investigation. Investigation of an alleged incident designed to gather and review the facts prior to proposal of an appropriate action.

## 6. **RESPONSIBILITIES**

a. The Head of the Agency is responsible for administering a fair and impartial program.

b. The Director of Human Resources is responsible for:

(1) Assisting and advising the Head of the Agency in the administration of the program.

(2) Providing training for managers and supervisors.

(3) Providing information, advice, and assistance to employees and supervisors.

c. Labor and Employee Relations Branch (LERB) is responsible for:

(1) Ensuring that situations identified by supervisors and managers as possibly requiring discipline are investigated.

(2) Drafting correspondence necessary to effect disciplinary and adverse actions.

(3) Defending the corrective action if challenged by the employee through one of the available appeals

systems.

- (4) Reviewing, in advance, actions to ensure they are fair and consistent with law, regulations, applicable policies, and administrative instructions.

d. Supervisors are responsible for:

- (1) Maintaining an office atmosphere that supports good employee management relations and efficient work operations.
- (2) Communicating to all employees performance standards and standards of conduct.
- (3) Dealing with problem situations as they occur in an effort to prevent their escalation into disciplinary incidents requiring corrective action.
- (4) Constructively correcting employee conduct or performance individually and in private.
- (5) Informing the next higher level of management of alleged misconduct that may warrant discipline.
- (6) Gathering and documenting facts to fully support a disciplinary or adverse action.
- (7) Promptly notifying LERB of any incident that may warrant a disciplinary or adverse action.
- (8) Ensuring that a proposed disciplinary or adverse action is not based on an employee's:
  - (a) Race, color, religion, sex, age, or national origin.
  - (b) Political beliefs, affiliations, or activities.
  - (c) Marital status.
  - (d) Physical handicap.
  - (e) Membership in a labor organization.
  - (f) Sexual orientation.

7. **DISCIPLINARY  
PROCESS**

- a. The Offense. Corrective actions usually result from an employee's actions or, in some cases, lack of action. If an incident occurs, the supervisor should prepare a detailed description. This description should include:
  - (1) Date, time, place, and circumstances surrounding the incident.
  - (2) Individuals involved, including any witnesses.
  - (3) Any aggravating or mitigating information.
  - (4) Any related inappropriate remarks (which should be recorded word-for-word if possible).
- b. Pre-action Investigation. After drafting a written summary of an incident, a supervisor should contact LERB for assistance. A pre-action investigation is normally conducted before any disciplinary action is taken. LERB routinely conducts these investigations.
- c. Recommendation for Action. After completing its investigation, LERB will provide the supervisor a recommendation including the appropriate level of discipline and any written statements that have been provided.
- d. Discipline and Performance. It is possible to use the disciplinary process to deal with unacceptable performance. Disciplinary or adverse action is often appropriate if an employee's performance is such that it discredits the agency or causes serious financial loss.
- e. Progressive Discipline. The concept of progressive discipline means imposing the minimum discipline necessary to solve a problem. If the problem persists, the severity of the penalty is progressively increased. This does not mean that the first discipline taken must be an admonishment—the severity of the penalty should match the seriousness of the offense. By working with LERB, supervisors can ensure that any disciplinary or adverse action proposed or taken will not be out of proportion to the offense. They must also ensure that a record of progressive corrective action is maintained.

8. **DISCIPLINARY  
ACTIONS**

- a. Oral Admonishment Confirmed in Writing (OACW). The first level of discipline—usually taken for less severe offenses. It normally consists of a written description of an oral discussion addressing an act of misconduct or performance deficiency. At a minimum, an OACW must:
- (1) Be in writing and state the specific reasons for the action. It must contain enough detail for an employee to understand what misconduct or performance deficiency brought about the action and why it was inappropriate.
  - (2) Inform the employee that more severe action may be taken for any future occurrences.
  - (3) Include a copy of any evidence relied upon for the action or advise the employee where it may be reviewed.
  - (4) Include the right to have the action reviewed under a grievance procedure, including the relevant time limit and who to contact.
  - (5) State that the action will be placed in the employee's Official Personnel Folder (OPF) for a specified period of time (not to exceed one year).
- b. Letter of Reprimand. The second level of discipline—usually issued for infractions more serious than those warranting an admonishment or when an admonishment fails to correct the deficiency. The minimum requirements are the same as for an OACW, except that it is placed in the employee's OPF for up to two years.
- c. Suspension of 14 days or less. While disciplinary in nature, these suspensions are taken for serious infractions or for repeated lesser offenses. In large part, the adverse action process set out below should be used to affect these suspensions. Any differences will be noted in part 9. below.
- d. Discipline and Performance. It is possible to use the disciplinary process to deal with unacceptable performance. Disciplinary or adverse action is often

appropriate if an employee's performance is such that it discredits the agency or causes serious financial loss.

Note: Suspensions of 14 days or less may be grieved but not appealed to the Merit Systems Protection Board (MSPB).

9. **ADVERSE  
ACTIONS**

a. These actions include:

(1) Suspension of more than 14 days. An enforced temporary non-pay status and absence from duty. Suspensions are almost always corrective in nature and are for serious instances of misconduct or repeated lesser offenses.

(2) Furlough. A non-disciplinary action placing an employee in a temporary non-duty and non-pay status for 30 days or less. Usually based on a lack of work or funds or for other non-disciplinary reasons.

Note: A furlough for more than 30 calendar days is a reduction-in-force action and the guidelines in this directive do not apply.

(3) Reduction in Grade. Occurs when an employee is moved to a position of lower grade under the classification system or the Federal Wage System.

(4) Reduction in Pay. Occurs when an employee's basic rate of pay is reduced involuntarily, i.e. not requested by the employee for personal reasons or for the employee's benefit. This excludes the loss of any differentials such as night work, overtime, hazardous duty, or holiday pay.

(5) Removal. A permanent involuntary separation terminating the employer-employee relationship. A removal action may be initiated for both disciplinary and non-disciplinary reasons. Reasons for non-disciplinary removal include:

(a) Failure to accept geographical or organizational

(b) Failure to retain required qualifications.

- (c) An employee's disability cannot be reasonably accommodated and the employee is not eligible for disability retirement.
- b. Procedural Steps. An employee who is the subject of a suspension or adverse action is entitled to:
  - (1) Written notice of the proposed action from an official at an administrative level higher than the employee. This notice must:
    - (a) State the specific reasons for the proposed action.
    - (b) State the length of the notice period.
      - i. Adverse actions require a minimum notice period of 30 days (Exception: See 6.).
      - ii. For suspensions of 14 days or less, the notice period is normally 15 days.
  - (c) Provide the employee with a reasonable time (not less than seven days), to answer orally and/or in writing and to furnish affidavits and other documentary evidence. In a routine case:
    - i. For adverse actions, 15 days is normally provided for the reply.
    - ii. For suspensions of 14 days or less, 10 days is normally provided for the reply.
  - (d) Provide a reasonable amount of official time, for the employee and a representative (if an agency employee) to prepare the reply. The amount of time will be based on the complexity of the case.
  - (e) Inform the employee that the reply will be considered before a decision is made.
  - (f) Inform the employee of his or her right to be represented by an attorney or other representative of his/her choice, provided that:
    - i. The employee's choice would not cause a

conflict of interest or position.

ii. The release of the representative from his/her official position would not give rise to unreasonable costs.

i.i.i The representative's priority work assignments would not preclude release from those assignments.

(g) Provide the employee with the opportunity to review the case file including the information used to propose the action. Copies will be provided upon request.

(h) Advise that the employee will be retained in a work status during the notice period unless circumstances warrant otherwise.

(2) A written decision and the specific reasons for the decision. The decision must:

(a) State that consideration has been given to all evidence, including the employee's reply.

(b) Specifically describe what was and was not supported in the advance notice.

(c) State any past record that was considered in reaching the decision (if the record of prior disciplinary actions was cited in the advance notice). If a part of the past record was not considered, a statement to that effect should be made.

(d) List the specific Douglas factors and their impact on the decision (see 11a). This is required for an adverse action and recommended for a suspension of 14 days or less.

(e) State the effective date, the type of penalty imposed, or the inclusive dates, if the penalty is a suspension. In setting the effective date:

i. The date the employee receives the notice of proposed action is not counted in the



notice period.

- ii. The notice period must be 30 full days following date of delivery for an adverse action and 15 full days for a suspension of 14 days or less.
  - iii. The final day of the notice period must fall on a weekday. A Saturday, Sunday, or a legal holiday may not be the last day of the notice period.
- (f) State the employee's appeal or grievance rights, including:
- i. If applicable, notice of the time limits for appealing to the MSPB and the appropriate address. A copy of MSPB's regulations and appeals form must be attached.
  - ii. Notice of any right to an agency dispute resolution process.
  - iii. Notice of the time limits for filing an Equal Employment Opportunity (EEO) appeal and the statutory basis for such an appeal.

## 10. EXCEPTIONS

- a. Indefinite Suspension. An exception to the 30-day advance notice period can be made if an employee may be guilty of a crime for which imprisonment might be imposed. An indictment is normally sufficient to establish reasonable cause, however, there must be a relationship between the alleged crime and the employee's position. The indefinite suspension can be used to quickly remove the employee from the premises for an extended period of time. An employee who is subject to an indefinite suspension is entitled to:
- (1) Seven days from receipt of the advance notice to answer orally and/or in writing and to furnish affidavits and other documentary evidence.
  - (2) Be informed that no decision will be made until his/her replies have been considered, or until the time for submitting such replies has elapsed.

- (3) Be informed of the condition(s) that will conclude the action, i.e. completion of the investigation and/or criminal proceedings.
- (4) Be informed that a removal action may be proposed prior to the termination of the indefinite suspension.
- (5) Be immediately placed in non-duty paid status (administrative leave).

b. Removing an Employee from the Workplace. An action taken when the agency has determined that the employee's continued presence would constitute unacceptable risk. These situations are rare. If the employee's presence could bring harm to the employee or others, to government property, or the government's interests, the agency may:

- (1) Assign or detail the employee to other duties where the risk does not exist or is not as great. This could include relocation to another facility, organization, etc.
- (2) If the employee requests, allow the employee to take leave. If the employee is absent from the worksite without requesting leave, place the employee in an absence without leave (AWOL) status.
- (3) Apply the exception found in 10.a. above, if appropriate.
- (4) Place the employee in a non-duty, paid status (administrative leave) during the notice period.

If a situation arises in which an employee needs to be removed from the workplace, contact LERB. Employees have specific rights in these situations and LERB will assist managers in meeting their obligations.

## 11. DETERMINATION

a. Considering Mitigating Circumstances. When arriving at the appropriate penalty in an adverse action, managers must be aware of the MSPB case law addressing mitigation of penalty. The following factors from Douglas vs. Veterans Administration must be considered when arriving at a decision to take an adverse action:

- (1) The nature and seriousness of the offense and its relationship to the employee's duties, position, and responsibilities. Was the offense intentional, technical, inadvertent, and committed maliciously or for gain or repeated frequently?
- (2) The grade and type of job. Is it supervisory? What is the level of responsibility? Is there contact with the public? What is the level of the position in the agency?
- (3) Past disciplinary record.
- (4) Past work record, including length of service, performance on the job, level of performance, ability to get along with co-workers, and dependability.
- (5) The effect of the offense on the employee's ability to perform the job and on the supervisor's confidence in the employee's ability.
- (6) Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- (7) The notoriety of the offense or its impact on the reputation of the agency; if there was any publicity, and if so, how widespread.
- (8) The employee's understanding or knowledge of what rules were violated in committing the offense.
- (9) Is rehabilitation likely?
- (10) Are there any mitigating circumstances? Unusual job tensions? Personality problems, mental impairment? Any harassment or bad faith, malice or provocation on the part of others involved in the matter.
- (11) Whether a lesser penalty would prevent such conduct in the future.

(12) The relationship of the offense to any applicable table of penalties.

- b. Although MSPB case law applies only to adverse actions, supervisors should review these factors when arriving at a penalty in a disciplinary action. They should be prepared to articulate why they did or did not affect the penalty as proposed and/or decided.
- c. The Severity of the Penalty. The penalty in the final decision may not be more severe than that in the notice of proposed action, but may be less severe. Proposing a lesser penalty than that actually taken would be misleading and could influence the employee's decision to reply and the nature of the reply.
- d. The Basis for the Decision. A decision to affect a suspension or an adverse action must be based only on the reasons in the notice of proposed action. If none of the reasons are sustained, no penalty may be imposed. A penalty, including one lesser than that proposed, may be decided upon if any of the reasons are sustained.
- e. When Changes are Necessary. A new notice of proposed action must be issued if additional charges or specifications are added or if the penalty is increased. The employee and his/her representative should be informed that the old notice is being rescinded and the reasons why. The new notice will include a new notice period and another opportunity for the employee to reply both orally and in writing.

12. **ADMINISTRATIVE  
PROCESS**

- a. Effecting the Action.
  - (1) Suspensions and Furloughs. To affect a suspension or furlough, the supervisor must submit two SF 52's; one to begin the action and one to return the employee to duty. It is extremely important that SF 52's are completed before the effective date of the suspension/furlough.
  - (2) Termination of employment. All actions that will result in the employee being terminated must be initiated by an SF 52.
  - (3) Reduction in grade or pay. All actions that will

result in the employee being reduced in grade or pay must be initiated by an SF 52.

- b. Documenting the Action. An SF 50 documenting the suspension or adverse action will be placed in the employee's Official Personnel Folder as a permanent record.

### 13. **OTHER OPTIONS**

In addition to disciplinary and adverse actions, there are other less formal or serious means of dealing with minor instances of misconduct. These include:

- a. Counseling. There are two types of counseling, verbal and written. Verbal counseling is usually appropriate when the employee's conduct is not a serious problem but needs to be addressed. This often involves simply pointing out to the employee what the rules governing behavior are and what is expected of employees. Verbal counseling is used when the supervisor believes that the conduct will not reoccur once it is mentioned to the employee.

Written counseling is appropriate when the supervisor feels the need to build a case that the employee has been told that his/her behavior is inappropriate. This is often used when less informal efforts have not been successful and a repeated offense will likely result in discipline.

Counseling is not a form of discipline and documentation of counseling should not go into the employee's OPF. The appropriate place to retain this documentation would be in the employee's "drop file" maintained by the immediate supervisor.

LERB will provide any needed assistance in investigating the situation or in developing written counseling records or memoranda.

- b. Restricted Leave Letters. If a supervisor has reason to believe that an employee is improperly using leave, the employee may be placed on "restricted leave." This normally requires the employee to provide acceptable medical evidence before sick leave will be approved. If emergency annual leave is being restricted, evidence of an emergency is required before leave will be approved. Failure to provide the required documentation will result

in a charge of AWOL and, usually, discipline.

If a supervisor suspects abuse, he/she needs to provide LERB with copies of the employee's timecards for a specified period of time (usually six months). In order to conduct a thorough review, any approved leave requests, supervisory documentation, etc. will also be needed.

If reason to suspect abuse is found, LERB will assist in drafting the letter placing the employee on restricted leave. The period of restriction is normally for six months at which time the record is reviewed and the restriction either lifted or extended.

14. **OFFICE OF PRIMARY  
INTEREST**

Administrative Resource Center, Human Resources  
Division